CRIMES OF WAR PROJECT
A DEFINING MOMENT–
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September 11 and the Middle East: Footnote or Watershed in World History?

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Despite the way in which it has been presented since, the shock occasioned by September 11, 2001 is not totally unprecedented. Something similar occurred on August 2, 1990, when the Iraqi army invaded Kuwait. From August 2 through to the liberation of Kuwait in early 1991, the world was riveted to what seemed at the time a tectonic shift of unprecedented proportions. And yet ten years later, the date hardly commands attention.

In fact, the jury is still out on August 2, 1990. Perhaps it was the start of a new world order, as it enhanced America's exclusive leadership of the planet, accelerating the demise and dismemberment of the Soviet Union, and generating large influxes of oil money reserves into the US economy from the Arabian Gulf and elsewhere. But all things considered, not much changed, above all for the societies where the crisis erupted: over a decade later, the same authoritarian governments are in place across the Middle East, and US presence remains fragile and problematic in the region.

Oddly enough, one of the most important single consequences of the Second Gulf War was September 11. Despite the massive victory on the ground and the rout of the Iraqi army with hardly a fight, the conflict never ended. The depth of frustration that this caused, as American soldiers remained deployed in Saudi Arabia and elsewhere, while Iraqi civilians were left unprotected against their government and burdened by an interminable sanctions regime in a country torn asunder, can hardly be overstated. Something was clearly rotten in the whole region.

Thus, it is not really all that surprising that the deadlock in the Middle East, where all the countries of the region are still ruled by authoritarian regimes, finally erupted in New York by way of Afghanistan, which had become the haven of disgruntled and frustrated young men from Saudi Arabia, mainly, and from other countries of the Muslim world. The combination of the Saudi and Afghani systems arguably produced a monster which struck in the heart of the US, a result all the more ironic since America had been the unconditional protector of the Kingdom's rulers for two generations and the enthusiastic supporter of the Mujaheddin in their fight against the Soviet Union.

The Middle Eastern Character of September 11

Naturally, the causal chain between August 1990 and September 2001 is porous. One element, however, is shared: its Middle Eastern character, including the longest conflict in modern times over the Jewish settlement of Palestine. That is why it remains an open question about how defining a moment September 11 really has been, when viewed from a long-term and multi-causal perspective. It is possible to put the event, however tragic, in the context of recurrent eruptions in an ongoing Middle East crisis, in which New York/September 2001 takes its place in the line of Kuwait/August 1990, Iraq-Iran/1980-

1988, Lebanon/September 1982, Iran/February 1979, all the way to Jordan-Egypt-Syria in June 1967, including the assassination in California, a year later, of Robert Kennedy, the leading contender for the US presidency, by a thug from the Middle East. Viewed in this way, the tragedy of September 11 appears more Middle Eastern. It is a reading that could easily be turned into a retrospective clash of civilizations pitting East against West, America and the Middle East, Islam v. Christendom.

The risk of exaggeration is obvious, and such shortcuts are as dangerous as they may be misleading, justifying many conspiratorial theories that feed the extremes in both camps. Yet the Middle Eastern connection culminating in September 11 can hardly be denied.

So is September 11 a watershed or a footnote in history? Yes, it was spectacular and massive; yes, it broke with the continental insulation of America from violence; but these two characteristics may not be sufficient to establish its centrality. In the history of the American nation, unless, God forbid, it experiences a disaster of larger proportion, the New York massacres will rank next to the three or four most significant dates since the formation of the United States: the declaration of independence, Gettysburg, Pearl Harbour and the fall of the Berlin Wall. But for the event to rank high objectively, it needs to usher in some sort of a new era in American and world history. Unless this happens, September 11 may one day seem like an historical footnote in much the way August 2, 1990 does today.

Understanding comes hard. The tools which social sciences offer to understand September 11 are in some ways remarkably defective: politically, economically, sociologically, legally, psychologically, even architecturally or aesthetically, angles vary. What is certain is that in twenty years, perhaps even at the turn of the next century, works will have accumulated to assess the event from every conceivable perspective. It would be presumptuous to anticipate the correcting passage of time, and the example of the closing pages of Tocqueville's *Democracy in America* offer a wise warning. Tocqueville was long viewed as a kind of prophet. Between the Bolshevik revolution of 1917 and the collapse of the Soviet Empire in 1989-91, those celebrated passages closing the first volume in 1835 – in which the French author predicted the rise of Russia and America –seemed eerily prescient. And yet today, at least in terms of Russia, they ring hollow. This should be kept in mind when we think about September 11.

The Ambiguities of "Terrorism"

Still, a reading of the event can reasonably start from the initial reaction of the US government, which was initially shared by the world. This reaction was defined the following day as a new worldwide war on terrorism and confirmed by the Security Council. In Resolution 1368, adopted unanimously on September 12, the massacres carried out in New York, Washington and Pennsylvania were described as "acts of terrorism". In an important sense, the shape of the new conflict---and for many, above all in the United States, it was a new World War III---was defined by this one term.

The problem is that terrorism as a concept remains so ill-defined that the idea of attacking it systematically transforms the use of violence---in international and domestic law the prerogative of states---into an open-ended project of endless war. And that, surely, is inconceivable, unless the American government now means to prosecute a series of wars to end all violence in the world. In theory, of course, such a neo-Kantian project for world peace might be laudable. But it is certainly premature. It is also poorly conceived: the US

government itself does not consider its planetary fight against terrorism as the end of all wars, and so it has stumbled from event to event, the prisoner of its own elastic objectives in a battle against an elusive specter that Washington and the rest of the world are unable to define.

It needs to be said that, despite being a highly law-conscious society, America has not heeded its own recent history. In the negotiations leading to the emergence of the International Criminal Court in Rome in the summer of 1998, US representatives had convinced the other parties that the inclusion of terrorism in the list of crimes to be prosecuted in the Court was not appropriate, because a consensual definition of that act could not be achieved. They were right, and lawyers and historians have been unable to agree on such a definition over the two centuries since "terreur" as politics was introduced by Robespierre in 1793, and "terrorism" took the characteristic shape that developed from the Law of Suspects in September 1793 to the Grande Terreur, introduced by the Loi du 22 Prairial An II (10 June 1794): the absence of due process, which led some 2500 "suspects" to the scaffold in Paris alone. This policy was seen through by the most articulate amongst the Founding Fathers, lawyer Alexander Hamilton, who wrote in 1794 a thoughtful Memorandum on "the excesses" of the period,*without using the term "terror" once:*

In the early periods of the French Revolution, a warm zeal for its success was in this Country a sentiment truly universal. The love of Liberty is here the ruling passion of the Citizens of the United States, pervading every class, animating every bosom. As long therefore as the Revolution of France bore the marks of being the cause of liberty, it united all hearts and centered all opinions. But this unanimity of approbation has been for a considerable time decreasing. The excesses which have constantly multiplied, with greater and greater aggravations, have successively though slowly detached reflecting men for their partiality for an object which has appeared less and less to merit their regard.

These excesses, considered by Hamilton as "accomplices with Vice, Anarchy, Despotism and Impiety," should have stopped soon after the revolution put the French monarchy in check. Instead of calm and moderation succeeding "the first shocks of the political earthquake", Hamilton continued, Americans have "been witnesses to one volcano succeeding another, the last still more dreadful than the former, spreading ruin and devastation far and wide – subverting the foundation of right security and property, of order, morality and religion – sparing neither sex nor age, confounding innocence with guilt, involving the old and the young, the sage and the madman, the long tried friend of virtue and his country and the upstart pretender to purity and patriotism – the bold projection of new treasons with the obscure in indiscriminate and profuse destruction."

The indiscriminate killing of innocents – "sparing neither sex nor age, confounding innocence with guilt, involving the old and the young, the sage and the madman, the long tried friend of virtue and his country and the upstart pretender to purity and patriotism" – may well be considered the one defining characteristic of "terrorism" on which everyone would agree. But the problems underlined by Hamilton remain. Can a government, as in the case of Robespierre's state terrorism, be also responsible for such acts? Does terrorism not occur when states or governments carry out violence that takes the lives of innocent civilians ?

Another lingering problem is the context in which civilians get killed. Do the objectives pursued by the perpetrators matter, that is, does it make any difference if we view them as freedom fighters or sheer murderers? Small wonder, then, that the reality of an

autonomous, discrete "crime of terrorism", *as opposed to "the fight against oppression", is elusive and intractable.*

Finally, there is the problem of distinguishing terrorism from other crimes. Until the USA Patriot Act was passed shortly after September 11, it was hard to find the word in American criminal statutes, except in conjunction with the use of special weapons or the hijacking of planes. All serious crimes tend to instill fear, revulsion or terror in society.

In short, a working consensual definition of "terror" and "terrorism" still does not exist. This is why the best minds of humanity, starting with Hamilton, have avoided the term for two hundred years. It is a term that defies definition. And there is no reason to think that contemporary lawyers and lawmakers will succeed in coming up with such a definition where Hamilton and everyone since has failed.

But if the killings on September 11 are not best described as "acts of terror", or "terrorist attacks", does that mean that a void ensues, at least in legal terms? Far from it. The occurrence of brutal and massive crimes, in which mainly innocent civilians have perished, has marred the conscience of humanity in recent years so heavily that a panoply of remedies has developed in the field of international criminal law against such "serious violations of international humanitarian law". Domestic and international tribunals, most remarkably the Yugoslav and Rwanda tribunals and the ICC, have taken on board a so-called "universal jurisdiction." In the case of September 11, rather than an inchoate war on terrorism, America and the world could have argued and agreed that a terrible and massive crime had taken place, whose authors and accomplices ought to be relentlessly pursued, arrested, prosecuted and punished. In lay parlance, what happened on September 11 was a massacre; in law, a crime against humanity.

Hence the difficulty of appreciating how much the massacre committed on September 11 represents a watershed or a footnote. It would be a footnote should the war against terrorism peter out for lack of a definable enemy. Alternatively, it really might represent a turning point---a negative one, alas---if the pursuit of violence causes unprecedented chaos by allowing any power to go after any "terrorist" whom it defines as such. Should any act of political violence against a civilian allow the government whose citizen is targeted to unleash its full force against the territory in which the "terrorist" finds friends or support, the consequences will be graver still.

This is easily illustrated. The year that followed September 11 has proved to be a harbinger of portentous and unruly developments under the label of war against terrorism, both over the Kashmir crisis and the Palestinian-Israeli conflict. That said, the possibility also exists that September 11 could represent a positive turning point, but only if any American and international use of violence toward those who perpetrated the atrocity is regulated by justice, accountability and due process. This is the course of law which America and any other government would certainly have pursued, had September 11 been the result of American criminals working within the United States. They would have been prosecuted and brought to justice, and foreign states would have been responsible for ensuring their arrest and trying them in accordance with international standards, or surrendering them to an American tribunal.

Curiously, the early depiction of a response to September 11 as "Infinite Justice" and the US government's initial decision to take gradual actions against the Taliban government derived from that philosophy. But "Infinite Justice" was put aside as policymakers became trapped

in the false depiction of the massacres as "an attack" and by the equally unwarranted prosecution of a crime against humanity as "war on terrorism", with no end in sight.

The Need for US Consistency in the Middle East

Will American administrations, present and future, be able or be willing to try to recast the massacres of September 11 in their correct mould, which is that of a crime against humanity, and to address the Middle Eastern connection in a qualitatively different manner? That is the crucial question. If they were to succeed in correcting the deep flaws in their original definition of what happened, and sought universal justice with the same vigour and robustness that characterizes American constitutional law, September 11 would indeed become a watershed event in the development of both law and morality in international relations. But should the war on terrorism continue unabated against ill-defined enemies, then the prospect that confronts us is that of right abandoned for might, law distanced by *realpolitik*, and justice abandoned to the asymmetric realities of contemporary power politics.

As for the Middle Eastern connection, the context of September 11 cannot be ignored. What has been popularized in the American imagination in the loaded question "why do they hate us?" should instead provoke a series of questions about American policy in the region, particularly towards Israel and the traditional Arab allies. It is not difficult to understand American antagonism towards Palestinian extremists blowing up passers-by in hotels and restaurants in Israel, nor the distrust towards the current Iraqi government for breaches of international law and the treatment of its population over three decades. Such revulsion is natural and morally justified.

But unless "friendly" governments in the region are judged and treated by the same standards – freedom and democracy – the vast majority of people in the Middle East will remain suspicious, inimical or opposed to the United States. Above all, no one in the region accepts the blind spot in US policy constituted by its deafening silence towards the Israeli government's exactions, epitomized by the support of Ariel Sharon, a man the Bush administration described as a "man of peace" despite the fact that an Israeli commission of enquiry had found him "personally responsible" for one of the worst massacres in recent history. By any objective standards, a country ruled by such a person, with a policy of open discrimination and domination of a population as large as its own, getting entrenched in further violence every day, such country is not a democracy.

In the same way as the sense in the Middle East that American policy in the region is unjust has created the deep animosity towards the US that is so widely felt, so justice needs to be the underlying theme for the proper remembrance of September 11. A qualitative correction is required, both in the need to describe September 11 as a day of massacre, consequently treating it as a crime against humanity; and the need to hold all the governments in the region, starting with Israel and other "allies", to the same standards that governed the relationship with the Soviet Union during the Cold War: no alliance until their government becomes democratic.

The full span of the 21st century may well need to elapse before the ultimate verdict is reached on the status of September 11 in American and world history. But universalism, the rule of law, justice, pluralism, accountability, good governance, human rights – these are all general variations on democracy, which remains sought shyly and selectively in the region.

Democracy in America, Tocqueville's prophetic study in the early 19th century, now animates the agenda of the world. Only America is the centre, no longer at the periphery, forcing upon it the mantle of responsibility towards all the democrats in the world.